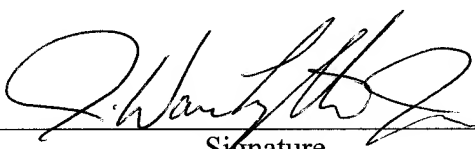


PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number A8644	
Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number	Filed	
	09/750,475	December 28, 2000	
	First Named Inventor		
	Lynh NGUYEN		
	Art Unit	Examiner	
	2152	Dohm CHANKONG	
<p style="text-align: center;">WASHINGTON DC SUGHRUE/142133</p> <p style="text-align: center;">46159</p> <p style="text-align: center;">CUSTOMER NUMBER</p>			
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal</p> <p>The review is requested for the reasons(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p><input checked="" type="checkbox"/> I am an attorney or agent of record. Registration number 39,283</p> <div style="text-align: right;">  Signature </div> <div style="text-align: right;"> J. Warren Lytle, Jr. Typed or printed name </div> <div style="text-align: right;"> (202) 293-7060 Telephone number </div> <div style="text-align: right;"> February 14, 2007 Date </div>			

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: A8644

Lynh NGUYEN

Appln. No.: 09/750,475

Group Art Unit: 2152

Confirmation No.: 7832

Examiner: Dohm CHANKONG

Filed: December 28, 2000

For: DATA SOURCE INTERFACE ENHANCED ERROR RECOVERY

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated November 14, 2006, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Applicant turns now to the rejections at issue:

Claims 1-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Polizzi in view of Guenther, and claims 20-22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Polizzi and Guenther in view of Brendel. Applicant respectfully submits that the claimed invention would not have been rendered obvious in view of the combinations of the cited prior art.

With respect to independent claim 1, the Examiner takes the position that Polizzi discloses many of the features recited in claim 1, but admits that Polizzi fails to teach or suggest

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“...detecting unavailability of the data source in response to an initial request for the data source by the remote application...dynamically detecting availability of the data source in response to a subsequent request for the data source and re-connecting the data source to the remote application in response to the subsequent request” as required by claim 1.

In the Advisory Action, the Examiner maintains the rejections, responding to the response to the final Office Action that Guenther does not teach dynamically detecting availability of the data source in response to a subsequent request for the resource. The Examiner asserts that Guenther’s disclosure at col. 9, lines 29-35 teaches this claimed featured. Applicant respectfully disagrees. That portion of Guenther essentially discloses that if a browser detects a server’s failure to reply to a request, the browser marks that server as “Bad” on a list of primary/backup servers. It then tries to send the request to another server on the primary/backup list of servers. Guenther discloses that “a client retries entries that were marked ‘Bad’ at a fairly frequent interval (at least once an hour) (so long as the client is still making requests, of course).”

The final Office action, however, glosses over limitations in the claim. Claim 1, for example, requires:

“detecting unavailability of the data source in response to an initial request for the data source by the remote application;

dynamically detecting availability of the data source in response to a subsequent request for the data source; and

re-connecting the data source to the remote application in response to the subsequent request.”

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Guenther does not disclose dynamically detecting the availability of a data source in response to a subsequent request for the data source, as recited in claim 1. Rather, Guenther discloses retrying an entry marked as “Bad” “at a fairly frequent interval (at least once an hour).” Hence, Guenther retries a server based on a specific time interval (once an hour) and not in response to a subsequent request as required by the claim. Even if Guenther’s statement of the retries being made “so long as the client is making requests” is deemed to disclose sending the retries “in response to a subsequent request,” since Guenther does not disclose that those retries are for “the data source,” namely, the same data source to which the initial request was sent, Guenther does not teach the limitation. Guenther merely states that retries are sent once an hour if “the client is making requests,” without specifying to which servers those requests are directed.

Claims 20-22 are patentable at least by virtue of their dependency from one of the independent claims discussed here.

Claims 1-5, 8-12 and 15-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Polizzi in view of Mastors. This rejection is set out in detail in the Office Action dated June 22, 2006. Applicant respectfully traverses the rejection.

As discussed above, Polizzi is relied on for teaching all the limitations of the independent claims except for disclosing the detection of the unavailability and availability of a data source in response to a request and reconnecting to the data source when it becomes available. Mastors is citing for teaching this feature missing from Polizzi.

Like Guenther discussed above, Mastors fails to teach or suggest the claim limitation of “dynamically detecting availability of the data source in response to a subsequent request for the

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data source; and re-connecting the data source to the remote application in response to the subsequent request.” In the portions of Mastors the Examiner relies upon (col. 6, lines 18-26 and col. 6, line 64 to col. 7, line 4), Mastors merely discloses writing data to a file at a client if the server is unavailable (col. 6, lines 22-23) and detecting “a reconnect contention between the client and server” (col. 6, lines 66-67). However, these portions of Mastors do not teach or suggest the claim limitation of “dynamically detecting availability of the data source in response to a subsequent request for the data source,” since Mastors merely describes detecting a reconnect condition without disclosing or suggesting that such detection is in response to a subsequent request for a data source, as required by the claims. Accordingly, even if Polizzi were modified based on Mastors the combination would not satisfy all the claim limitations.

In view of all the foregoing, Applicant respectfully submits that claims 1, 8 and 15, and the claims that depend therefrom, are not rendered unpatentable by the prior art. Accordingly, Applicant submits that all of the claims are in condition for immediate allowance and respectfully requests withdraw of the finality of the rejections and that the application be passed to issuance.

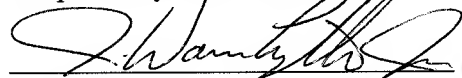
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46159

CUSTOMER NUMBER

Respectfully submitted,



J. Warren Lytle, Jr.

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Date: February 14, 2007